

FILED**SEP 16 2004****CHARLES J. WALSH
J.S.C.**

Marsha O'Neill,**Plaintiff,****v.****Wyeth, Inc.,****Defendant(s).**

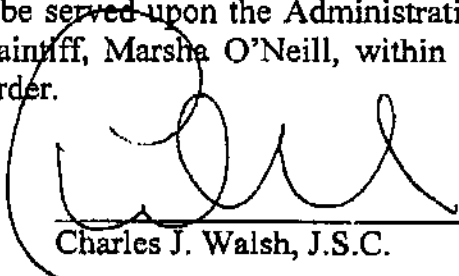
**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO.: L-8846-03-MT****CIVIL ACTION
DIET DRUG LITIGATION****ORDER GRANTING
FEE APPLICATION**

THIS MATTER having come before the Court on the application of Weitz & Luxenberg ("W&L") and Hersh & Hersh ("H&H") (Amy Eskin, Esq. appearing) attorneys for the plaintiff Marsha O'Neill for an Order granting Application for Fee, as permitted by R. 1:21-7(c)(5); and the Court having reviewed the papers; and for the reasons set forth in its Letter Opinion of September 16, 2004, and for other good cause shown;

IT IS on this 16th day of September 2004,

ORDERED that:

1. An award of legal fees in the amount of \$666,665.00 and costs in the amount of \$24,425.79 is granted;
2. A copy of this Order shall be served upon the Administrative Office of the Courts and upon plaintiff, Marsha O'Neill, within seven (7) days of the receipt of this Order.



Charles J. Walsh, J.S.C.

SUPERIOR COURT OF NEW JERSEY

CHARLES J. WALSH
JUDGE



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September 16, 2004

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RE: O'Neill v. Wyeth
Docket No.: BER-L-8846-03 MT

Dear Counsel:

This matter is before the Court on an application by Weitz & Luxenberg ("W&L") and Hersh & Hersh ("H&H") (collectively the "law firms") pursuant to R. 1:21-7(c)(5) and 1:21-7(f). The law firms seek \$700,173.88 in fees. For the reasons which follow, the Court essentially grants this application and awards \$666,665.00 in fees and \$24,425.79 in costs and expenses to the law firms.

The underlying case involved a product liability claim against Wyeth Corporation ("Wyeth"). It was alleged that Marsha O'Neill's primary pulmonary hypertension was caused by her taking Wyeth's diet drugs. The law firms represented Marsha O'Neill and successfully negotiated a significant settlement.¹ Amy Eskin, Esq. ("Eskin") of H&H apparently

¹ The terms of the settlement agreement and the amount paid are considered confidential by the parties.

supervised this litigation. She, on behalf of the law firms, now seeks legal fees in accordance with R. 1:21-7(f).

Ehrlich v. Kids of North Jersey, Inc., 338 N.J. Super. 442 (App. Div. 2001), provides a succinct review of the standards to be applied by a court to an application filed under R. 1:21-7(f). A court is to award a reasonable fee "in light of all the circumstances." R. 1:21-7(f). The Court should be guided by New Jersey Rule of Professional Conduct 1.5 which lists the following factors as relevant when setting an appropriate legal fee:

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

The plaintiff's attorneys have confronted complex issues dealing with causation in connection with the Wyeth diet drug litigation as well as gathering documents necessary to prove specific causation in this case. Obviously, a significant learning curve is implicated in these types of cases. Eskin was actively involved in the diet drug litigation and H&H initiated one of the first phen-fen litigations which was begun in the mid-1990's in the Federal District Court for the Northern District of California. Eskin and other members of H&H appear to be experienced and capable attorneys in prosecuting complex mass tort litigation. Of course, the fee here was contingent and in that sense involved significant risks on H&H's part.² In short, many factors in N.J.R.P.C. 1.5 are directly and favorably implicated.³

The law firms have sought \$700,173.88 as their fee and the plaintiff has agreed that this request is reasonable. The Court is inclined to grant a substantial fee but one somewhat less than requested by the law firms. While the law firms have obtained a substantial and favorable result for O'Neill, and made investments in time and money necessary to obtain such a result, the case was not tried. In the Court's view, the law firms' legal fees should reflect that fact. Accordingly, using the fee schedule now present in R. 1:21-7(c) and considering the excess recovery, the Court will make the award of \$666,665.00 in legal fees and \$24,425.79 in costs.

An Order is enclosed with this Letter Opinion.

Very truly yours,


Charles J. Walsh, J.S.C.

CJW:len
Encl.

² The law firms indicate that the contingent fee agreement with O'Neill anticipated an attorneys' fee of 33 1/3% on the recovered amount which, they say, is appropriate under California law.

³ The law firms have not indicated how the fees awarded here will be shared, if indeed that is the case. As indicated, in the moving papers H&H indicated that it did the great majority of the work. The Court notes that both law firms are well-known firms representing plaintiffs in a number of mass tort litigations.